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SUBJECT: THAIS TO TAKE U.S. TO WTO OVER CONTINUOUS BOND
REQUIREMENT FOR SHRIMP IMPORTS

REF: BANGKOK 4311

1. RTG trade officials decided December 6 to file a complaint against the U.S. in the WTO over a U.S. requirement that shrimp importers file a continuous bond to cover expected anti-dumping duties. Nadhawan Tanyongmas, Trade Officer in the Department of Foreign Trade, said RTG representatives in Geneva would be prepared to file the complaint with the WTO as early as January 2006.

2. The RTG action is related to an affirmative anti-dumping determination by the International Trade Commission (ITC) in January 2005 against Thai shrimp exports. The ITC ruling placed a 5.95 percent duty on shrimp exports from Thailand.

3. The RTG had considered taking the case to the WTO earlier but decided to await the outcome of an ITC review of the original anti-dumping determination to consider the impact of the December 2004 tsunami which devastated a significant part of the Thai shrimp industry. The ITC review concluded in November that anti-dumping duties would remain at the same level.

4. The RTG will be challenging U.S. Customs and Border Protection (CBP) rules which require importers of aquaculture products subject to affirmative anti-dumping findings to not only pay a cash deposit for the amount of the duties on each shipment, but also to annually post a secured, continuous bond for expected future duties. The amount of the bond is based on calculated duties on the value of an importer's shipments over the previous twelve months. The rules were instituted to ensure collection of final anti-dumping duties (see reftel).

5. RTG officials called the continuous bond a "double burden" and said it had been a hardship for Thai shrimp exporters. U.S. importers have insisted that Thai exporters serve as the importer of record and bear the burden of the bond requirement. Poj Wattananon, president of the Thai Frozen Foods Association, expected Thai exporters would need to place guarantees of USD 100 million for 2006. Many smaller shrimp exporters have been unable to arrange financing for the new bond requirements and have ceased exporting to the U.S. Larger exporters have successfully continued exporting but complain that the financial outlay for the continuous bond is not only an added expense but also causes cash flow difficulties.

6. Ms. Nadhawan of the Dept. of Foreign Trade said the RTG would take the case to the WTO as a violation of Article 18.1 of the WTO Anti-Dumping Agreement. Article 18.1 states that no specific actions against dumping may be taken except in accordance with the Agreement, which sets out tightly defined allowable actions. The RTG will try to make the case that the continuous bond is an anti-dumping measure not explicitly allowed in the Agreement and therefore in violation of WTO rules.

BOYCE